

ORIGINAL

OPEN MEETING AGENDA ITEM



0000089818

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

OCT 21 2008

BEFORE THE ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE

DOCKETED BY

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9 IN THE MATTER OF THE APPLICATION
10 OF COOLIDGE POWER CORPORATION IN
11 CONFORMANCE WITH THE
12 REQUIREMENTS OF ARIZONA REVISED
13 STATUTES 40-360.03, FOR A CERTIFICATE
14 OF ENVIRONMENTAL COMPATIBILITY
AUTHORIZING CONSTRUCTION OF A
NOMINAL 575 MW NATURAL GAS-FIRED,
SIMPLE CYCLE GENERATING FACILITY
LOCATED WITHIN THE CITY OF
COOLIDGE IN PINAL COUNTY, ARIZONA.

DOCKET NO. L-00000HH-08-0422-00141
Case No. 141

Arizona Corporation Commission
Staff's Request for Review and Notice
of Filing of Concerns Related to
Irregularities in Proceedings

15 I. INTRODUCTION.

16 In the above-captioned siting application, a site tour occurred on Monday, September 29,
17 2008. Thereafter, there were two days of hearing on September 30 and October 1, 2008, before the
18 Siting Committee ("Committee"), an evening public comment session on September 30, 2008, and a
19 Committee vote approving the application on October 1, 2008. The Arizona Corporation
20 Commission Staff ("Staff") became a party to the proceedings after filing an application for
21 intervention. No Staff member or Staff attorney attended the site tour.

22 During the course of the hearing on September 30, 2008, testimony by the applicant's
23 witnesses and comments by its attorney revealed that there had been off-the-record discussions
24 between Committee members and the applicant's representatives and attorneys during the site tour
25 held on September 29, 2008. See Docket No. L-00000HH-08-0422-00141, Transcript of Record
26 ("Tr.") at 91:23-101:3. Staff Counsel raised concerns on the record about the possibility of Open
27 Meeting Law ("OML") and *ex parte* issues related to the tour. Tr. at 117:9-15. After an off-the-
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1 record discussion with the applicant's attorneys, Staff Counsel was not able to obtain sufficient
2 information to form an opinion as to (1) whether the OML notice was adequate, or (2) whether the
3 off-the-record discussions complied with siting statutes and rules, including the siting rule prohibiting
4 *ex parte* discussions. Tr. at 125:24-126:19. On the record, Chairman Foreman directed Staff Counsel
5 to docket her concerns with supporting analysis. Tr. at 124:21-125:1.

6 On September 30, and October 1, 2008, the Committee continued to hear evidence and take
7 public comment; on October 1, 2008, the Committee also discussed the application and voted to
8 approve it. On October 6, 2008, the Chairman docketed a Certificate of Environmental Compatibility
9 ("CEC") in the form approved by the Committee.

10 After the conclusion of the siting proceedings, Staff Counsel discovered that there had not
11 been a notice and agenda that complied with the OML for the site tour, the two days of hearing, or
12 the Committee vote to approve a CEC for the application. Moreover, the Committee proceedings
13 related to the site tour did not comply with the August 14, 2008, public notice of hearing, the siting
14 statutes, the Commission's rules related to siting hearings, or the siting rule related to *ex parte*
15 communications.

16 Although Staff has no issue with the technical merits of the Project, the totality of the
17 procedural irregularities in the proceedings have the potential to diminish the Commission's and the
18 public's confidence in this record. Therefore, Staff files this Request for Review pursuant to A.R.S. §
19 40-360.07 for the Commission's full consideration and determination of whether granting the Project
20 a CEC is in the public interest under these circumstances. Initially, Staff notes that the decision to
21 approve a siting application has significant impacts upon broad public interests. For this reason, the
22 integrity of the record is especially important in these matters.

23 **II. IT APPEARS THAT THERE WAS NO NOTICE AND AGENDA FOR THE**
24 **COOLIDGE SITING PROCEEDINGS THAT SUFFICIENTLY COMPLIED WITH**
25 **OPEN MEETING LAW.**

26 The Open Meeting Law statutes ("OML") apply to public meetings of the Committee. *See*
27 A.R.S. § 38-431, *et seq.* The Committee's open meetings must be noticed and posted with an agenda
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1 in a manner that complies with A.R.S. § 38-431.02. Although there was an August 14, 2008, public
2 notice of hearing that was published and posted for the hearings in this case, the August 14th hearing
3 notice did not comply with the notice and agenda requirements of the OML. *See* A.R.S. § 38-431.02.
4 The August 14th hearing notice does not refer in any way to the OML, does not state that there will be
5 an open meeting held by the Committee on the Coolidge application, does not refer to the hearing
6 proceedings as an open meeting held by the Committee, does not set forth an agenda for the meeting,
7 and most importantly, does not state or otherwise provide notice that the Committee will hear
8 evidence, discuss, or vote on the Coolidge application for a CEC. *See* August 14th Hearing Notice,
9 Attachment A. Thus, the August 14th hearing notice did not provide the required open meeting notice
10 that the Committee, sitting as a public body, would take evidence, discuss, or vote on Coolidge's
11 application for a CEC. In short, the Committee's proceedings in this matter were not properly
12 noticed to the public as open meetings.
13

14
15 In a Siting Committee proceeding, the issuance and posting of an Open Meeting Law notice
16 and agenda are under the purview and responsibility of the Attorney General or his designee, who by
17 statute sits as the Chairman and Presiding Officer of the Siting Committee. Thus, the process of
18 issuing and posting a notice and agenda that complies with OML is typically transparent to the
19 Committee members and the parties to a siting application. In this instance, it appears that the
20 Committee members and the parties were unaware that an OML notice and agenda had not been
21 issued and posted by the Chairman as is normally the case.

22 Furthermore, there is no reason to assume that the Committee members who attended the site
23 tour had any reason to believe that the tour was not being conducted in accordance with properly
24 noticed protocols issued by the Chairman. In fact, at the procedural conference held on September
25 19, 2008, the Chairman indicated that he would be issuing an "open meeting posting" concerning the
26 tour. Prehearing Conference, Tr. at 17:15-21. Unfortunately, no such open meeting notice appears to
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1 have been made. In sum, the protocol used for the tour would not have been inappropriate if it had
2 been properly noticed in accordance with the OML.¹

3 In addition, an important point must be made concerning the OML discussions in this filing.
4 Staff wants to make it clear that nothing in this record indicates that anyone intended to knowingly
5 circumvent the application of the OML to the Committee's proceedings.
6

7 **III. THE COMMITTEE PROCEEDINGS DID NOT COMPLY WITH THE AUGUST 14TH**
8 **HEARING NOTICE.**

9 **A. The August 14, 2008 Public Hearing Notice Prohibited Off-The-Record *Ex Parte***
10 **Discussions On The Tour.**

11 The published and posted August 14th notice states in relevant part that

12 [t]he Committee may conduct a tour of the Project Site on Monday,
13 September 29, 2008. The map and itinerary for the tour will be posted
14 on the Project website. The tour will depart from the Coolidge Youth
15 Center at approximately 1:30 p.m. Members of the public may follow
16 the Committee on the tour in their own private vehicles. *During the*
17 *tour the Committee will not deliberate in any manner concerning the*
18 *merits of the Application or the Project.*

19 (Emphasis added). The notice also states in relevant part that

20 [t]hese proceedings are governed by Arizona Revised Statutes Section
21 40-360 and 40-360.13 and Arizona Administrative Code Rules R14-3-
22 220 and R14-3-113.

23 And, the notice further states that "[n]o substantive communications, not in the public record, may be
24 made to any member of the Committee."

25 Contrary to these provisions in the August 14th notice of hearing, applicant's representatives
26 and attorneys discussed evidentiary matters concerning the application with the Committee members
27 on the tour. These discussions occurred off the record, outside the presence of the Staff, and without
28 a court reporter. On the tour, the applicant's representatives and attorneys discussed evidentiary and
factual matters, such as the height of the stacks, size and mass of the project, and the project's

¹ As discussed below, the failure to provide for transcription of the matters discussed on the tour raises other issues under the siting laws.

1 appearance. *See* Tr. at 95:19-101:3, 118:17-124:20. The off-the-record tour discussions also included
2 comparisons to factual information filed in the application, (Tr. at 122:8-123:8), as well as
3 comparisons to a previously sited plant. Tr. at 96:11-101:3.

4 The hearing notice states there will be no deliberations by the Committee on the tour and that
5 the hearing will commence on September 30, 2008, one day after the tour. However, the Committee
6 heard, received, and exchanged facts and evidence about the application on the tour. Under several
7 Attorney General ("AG") opinions, it is clear that the definition of "deliberations" by a public body is
8 not limited to discussing or exchanging viewpoints at the time of vote. The "exchange of any facts
9 relating to a matter which foreseeably might require some final action" by a public body are by
10 definition "deliberations" under the OML. Ariz. Op. Atty. Gen. I05-004; I97-012; I79-4; I75-8.
11 When the Committee members heard and discussed facts and evidence related to matters stated in the
12 application, they conducted "deliberations" as that term is defined in the AG opinions. If there were
13 to be an assertion that the term "deliberation" under the OML is more narrowly defined, that assertion
14 would appear to be dispelled by the unequivocal language in the above-cited AG opinions.²

15 There may be an issue as to whether there was a Committee quorum on the tour and whether
16 the OML applied to the tour if by happenstance there was no quorum. The transcript from the
17 September 30th hearing indicates that there were five Committee members on the tour, including the
18 Chairman. Tr. at 122:1-3. Thus, it appears that there was one less member than required for a quorum
19 in attendance on the tour. Even assuming that the absence of a quorum eliminates any OML
20 violation, the conduct on the tour nonetheless raises concerns as to fundamental fairness. As the
21 Chairman stated at the prehearing conference:

22
23 What I would like to do is do an open meetings posting with this, so we
24 will make sure - - I'm not sure that is fully necessary, since there will
25 be no discussions concerning the merits of the application at that time,
26 but out of an abundance of caution, I think it is just good practice to do
27 a public meetings posting of the route tour.

28 ² If the AG's view about the definition of the term "deliberation" is now different than that stated in its published
opinions, it would appear that some public statement to that effect would be appropriate guidance for all public bodies
covered by the OML.

1 Prehearing Conference Tr. at 17:15-21. In light of the Chairman's statements, the parties (as well as
2 the public) had no reason to believe that discussions concerning the merits of the application would
3 occur on the tour.

4 Even if the communications on the tour itself when viewed in isolation do not constitute OML
5 violations, such issues may be raised by the discussions of the tour on the record at the September
6 30th hearing, which was not properly notice under the OLM. These on-the-record discussions about
7 the tour appear to be serial communications as to facts and evidence related to the application. These
8 communications were received and exchanged by the Committee members on the tour and then
9 subsequently communicated to those members that did not attend. A recent AG opinion addresses
10 serial communications and states:

11 [t]he requirement that the OML be construed in favor of open and
12 public meetings leads to the conclusion that simultaneous interaction is
13 not required for a "meeting" or "gathering" within the OML. "public
14 official may not circumvent public discussion by splintering the
15 quorum and having separate or serial discussions. . . . Splintering the
16 quorum can be done by meeting in person, by telephone, electronically,
17 or through other means to discuss a topic that is or may be presented to
18 the public body for a decision. . . . Thus, even if communications on a
19 particular subject between members of a public body do not take place
20 at the same time or place, the communications can nonetheless
21 constitute a "meeting".

22 Ariz. Op. Atty. Gen. I05-004 at 3-4 (internal citations omitted); see also Ariz. Op. Atty. Gen. I08-008
23 at 4.

24 Also, the hearing notice states that the Committee proceedings are governed by the siting
25 statutes and the *ex parte* rule. However, again contrary to the hearing notice, the tour discussions did
26 not comply with the siting statutes and the *ex parte* rule. Neither the public nor Staff had notice,
27 actual or constructive, that the applicant's representatives and its attorneys would discuss evidence
28 concerning the application with Committee members on the tour, outside of the transcribed
proceedings and in contravention of the *ex parte* rule. Indeed, just the opposite was true. Relying on
the notice, Staff and the public would believe that no such off-the-record communications would take
place.

1 Finally, the off-the-record discussion on the tour did not comply with the last sentence of the
2 notice, which states that no substantive communications, not in the public record, would be made to
3 any member of the Committee. In direct contradiction of this statement, the applicant's
4 representatives and attorneys discussed the application with Committee members off the record and
5 without a court reporter present.

6
7 **B. The Procedural Protections Embodied In The Open Meeting Law And The Siting
8 Laws Are Not Limited To "Contested" Matters.**

9 On the record at the September 30th hearing, the Chairman stated that no "contested" matter
10 was discussed on the tour. Tr. at 122:22-123:8. OML and the Siting Law prohibitions concerning the
11 exchanging and receiving of facts and evidence are not limited to discussions of "contested" matters
12 by a public body. Moreover, in siting cases, no committee member could determine with certainty
13 what evidence might be controversial or contested before the hearings commenced and public
14 comment was taken.³ For example, in Siting Case No. 112 (Toltec project application), public
15 comment raised the subsidence and water table issues that became significant and controversial
16 points in that proceeding. In fact, the Toltec application was eventually denied in substantial part
17 based upon those issues. See Decision No. 64446, Docket No. L00000Y-01-0112, (Feb. 6, 2001).

18 **C. The Off-The-Record Evidence Was Significant To The Committee's
19 Consideration Of The Application.**

20 The impact on the site of the Project's size, height, mass, position, and appearance are
21 essential points in the Committee's evaluation of the environmental factors. See A.R.S. § 40-360.06.
22 The siting rules require this information in the application. See A.A.C. R14-3-219. In Siting Case
23 No. 105 (SRP's Santan project application), largely as a result of the public's concern related to
24 height and size issues, the CEC plant site approval was conditioned upon substantial mitigation of
25 visual impacts. See Decision No. 63611, Docket No. L00000B-00-0105, (May 1, 2001).

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28 ³ In this case, the site tour occurred on September 29, 2008. The public comment session did not occur until the evening of the next day, September 30, 2008.

1 IV. EVEN IF THE AUGUST 14TH HEARING NOTICE HAD NOT EXPLICITLY
2 PROHIBITED OFF-THE-RECORD *EX PARTE* DISCUSSIONS BETWEEN THE
3 APPLICANT'S REPRESENTATIVES AND THE COMMITTEE MEMBERS ON THE
TOUR, THE SITING LAWS PROHIBITED THE DISCUSSIONS.

4 A. The Off-The-Record Discussions Conducted During The Site Tour Did Not
5 Comply With The Siting Statute Governing Proceedings Before The Siting
6 Committee.

7 A.R.S. § 40-360.04.C states:

8 The committee or hearing officer shall receive *under oath and before a*
9 *court reporter the material, nonrepetitive evidence and comments of*
10 *the parties* to the proceedings and any rebuttal evidence of the
11 applicant, and the committee or hearing officer may require the
consolidation of the representation of nongovernmental parties having
similar interests.

12 (Emphasis added). This statute speaks for itself. It prohibits the Committee from hearing evidence
13 and comments by the parties that are not under oath and that are not transcribed by a court reporter.

14 The site tour discussions did not comply with this statute.

15 B. The Off-The-Record Discussions Conducted During The Site Tour Did Not
16 Comply With Siting Rules Governing Proceedings Before The Siting Committee.

17 A.A.C. R14-3-208.D states:

18 The Presiding Officer shall receive *under oath and before a court*
19 *reporter the material, nonrepetitive evidence, and comments of the*
20 *parties* to the proceedings and any rebuttal evidence of the applicant.

21 (Emphasis added). This rule prohibits the Committee from hearing evidence and comments by the
22 parties that are not under oath and that are not transcribed by a court reporter. The site tour
23 discussions did not comply with this rule.

24 C. The Off-The-Record Discussions Conducted On The Site Tour Did Not Comply
25 With The Siting Committee's *Ex Parte* Rule.

26 R14-3-220 states:

27 A. Purpose. It is the purpose of this rule to assist members of the
28 Arizona Power Plant and Line Siting Committee in avoiding the

1 possibility of prejudice, real or apparent, to the public interest in
2 proceedings before the Siting Committee.

3 B. Application. The provisions of this rule apply from the time a notice
4 of siting hearing is published pursuant to R14-3-208(A).

5 C. Prohibitions.

6 1. No person shall make or cause to be made an oral or written
7 communication, not on the public record, concerning the
8 substantive merits of siting hearing to member of the Siting
9 Committee involved in the decision-making process for that
10 siting hearing.

11 2. No member of the Siting Committee shall request, entertain,
12 or consider an unauthorized communication concerning the
13 merits of a siting hearing.

14 3. The provisions of this rule shall not prohibit:

15 a. Communications regarding procedural
16 matters;

17 b. Communications regarding any other
18 proceedings;

19 c. Intra-agency or non-party communications
20 regarding purely technical and legal matters.

21 D. Remedy.

22 1. A member of the Siting Committee who receives an oral or
23 written offer of any communication prohibited by this rule must
24 decline to receive such communication and will explain that the
25 hearing is pending for determination and that all communication
26 regarding it must be made on the public record. If unsuccessful
27 in preventing such communications, the recipient will advise the
28 communicator that the communication will not be considered, a
brief signed statement setting forth the substance of the
communication and the circumstances under which it was made,
will be prepared, and the statement will be filed in the public
record of the siting hearing.

2. Any person affected by an unauthorized communication will
have an opportunity to rebut on the record any facts or
contentions contained in the communication.

1 3. If a party to a contested siting hearing makes an
2 unauthorized communication, the party may be required to
3 show cause why its claim or interest in the siting hearing should
4 not be dismissed, denied, disregarded, or otherwise adversely
5 affected on account of such violation.

6 This rule speaks for itself as to its effect and purpose. In relevant part, it prohibits the parties to a
7 siting proceeding and Committee members from discussing a pending matter off the record outside
8 the presence of another party to the proceeding. The site tour discussions did not comply with this
9 rule.

10 **V. DUE PROCESS.**

11 Under the siting statutes, the siting process includes an evidentiary hearing before the
12 Committee. *See* A.R.S. § 40-360.04. The Committee evaluates the proposed project in light of the
13 environmental factors identified in A.R.S. § 40-360.06 and makes its decision on the application.
14 The Commission then considers the Committee's evidentiary record and the Committee's decision,
15 and determines whether to grant or deny a CEC to the applicant by balancing the need for the project
16 with its impact on the environment. *See* A.R.S. § 40-360.07.

17 In light of the irregularities described above, it could be asserted that fundamental due process
18 was not afforded to the public, thereby undermining both the public interest and the Commission's
19 confidence in the Siting Committee's record, which is the evidentiary basis for the Commission's
20 ultimate decision. Projects of this type have the potential to significantly impact the environment and
21 ecology of Arizona, and should therefore be subject to high standards of scrutiny.

22 **VI. RATIFICATION OF THE COOLIDGE SITING PROCEEDINGS.**

23 Any legal action by a public body that does not comply with the OML is void unless ratified
24 pursuant to A.R.S. § 38-431.05.B. The Chairman has, however, issued an open meeting notice and
25 agenda to provide an opportunity for the Committee to consider ratification pursuant to OML of its
26 approval of the CEC. Notice and Agenda for Ratification, Attachment B. The Committee ratification
27 proceedings are scheduled for October 30, 2008 in Coolidge, Arizona.
28

The Committee could choose to pursue ratification and vote to approve the CEC by ratifying its earlier vote. However, that is not the only possible outcome of further proceedings. The majority of the Committee may vote not to ratify the previous approval.

Whatever the outcome, the matter will then come before the Commission. Under the statutory siting process, the Commission has the ultimate authority to grant or deny Coolidge a CEC based upon the evidentiary record transmitted by the Committee. The Commission may determine that the irregularities in the proceedings before the Committee diminish the integrity of the record, and the Commission may elect to deny the CEC in order to protect the public interest. On the other hand, the Commission could determine that the ratification process has ameliorated the OML and other procedural irregularities, and may vote to grant the applicant a CEC.

VII. CONCLUSION.

Staff is not bringing this Request for Review based upon any technical aspects of the Project. In its analysis, Staff concluded that approval of the Project is appropriate on the merits. However, the procedural irregularities presented by this record are not insubstantial, and Staff believes that it is important to bring these matters to the Commission's attention in a request for review. Siting power plants and transmission lines is a difficult task, and projects that are sited cannot be easily removed from the Arizona landscape. Because the environment and the ecology of the state is significantly impacted by each sited project, protection of the public concern is paramount. In light of that public concern, it is important that the Commission be aware of the totality of the record when it makes its decision in this matter.

Respectfully Submitted this 21st Day of October, 2008.

Janice M Alward
Janice M. Alward
Chief Counsel, Legal Division

1 Original and twenty-five (25)
2 copies of the foregoing filed this
21st day of October, 2008 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

5
6 Copies of the foregoing
7 mailed this 21st day of
October, 2008 to:

8 Jay I. Moyes
9 MOYES STOREY, LTD.
1850 N. Central Avenue
Suite 1100
10 Phoenix, Arizona 85004-0001

11

12 *R. Osorio*

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ATTACHMENT A

ORIGINAL

**BEFORE THE ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING COMMITTEE**

In the matter of the Application of Coolidge Power Corporation in conformance with the requirements of Arizona Revised Statutes 40-360.03 and 40-360.06 for a Certificate of Environmental Compatibility authorizing the Coolidge Generating Station, a nominal 575 MW natural gas-fired, simple cycle generating facility located within the City of Coolidge in Pinal County, Arizona.)	Docket No. L-00000HH-08-0422-00141	Case No. 141	DOCKETED	AUG 15 2008	AZ CORP COMMISSION DOCKET CONTROL	2008 AUG 15 P 3:31	RECEIVED
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NOTICE OF HEARING

A PUBLIC HEARING WILL BE HELD before the Arizona Power Plant and Transmission Line Siting Committee ("Committee") regarding the Application of Coolidge Power Corporation ("Applicant") for a Certificate of Environmental Compatibility authorizing the Coolidge Generating Station, a nominal 575 MW natural gas-fired, simple cycle electric generating facility ("Project"). The hearing will be held at the Coolidge Youth Center, 660 South Main Street, Coolidge, AZ 85228 and will begin on Tuesday, **September 30, 2008, at 9:00 a.m. and Wednesday, October 1, 2008, at 9:00 a.m.** The hearing will adjourn at approximately 5:00 p.m. on each day, unless the proceedings conclude earlier in the day. Additional hearings, if necessary, will be noticed on the Project website at <http://www.transcanada.com/coolidge> and on the Arizona Corporation Commission's ("ACC") website at: http://www.azcc.gov/AZ_Power_Plant/LineSiting-Calendar.asp (the address contains two underscores as follows AZ_Power_Plant).

The Committee may conduct a tour of the Project Site on Monday, September 29, 2008. The map and itinerary for the tour will be posted on the Project website. The tour will depart from the Coolidge Youth Center at approximately 1:30 p.m. Members of the public may follow the Committee on the tour in their own private vehicles. During the tour the Committee will not deliberate in any manner concerning the merits of the Application or the Project.

PUBLIC COMMENT WILL BE TAKEN AT THE BEGINNING OF EACH HEARING DAY. PUBLIC COMMENT WILL ALSO BE TAKEN IN A SPECIAL EVENING SESSION ON TUESDAY, SEPTEMBER 30, 2008 BEGINNING AT 7:00 P.M., AT THE COOLIDGE YOUTH CENTER, 660 SOUTH MAIN STREET, COOLIDGE, ARIZONA 85228. Any interested member of the public may appear and present public comment during any of the times allotted for public comment noted above. A person may be limited to a single opportunity, and/or to a limited amount of time, to present comments, at the discretion of the Chairman of the Committee.

Any person may make a limited appearance at the hearing by filing a written statement with the Director of Utilities, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007, not less than five days before the date set for hearing. A person making a limited appearance or presenting oral comment shall not be a party to this proceeding nor have the right to present testimony or cross-examine witnesses. Any organization or individual wishing to qualify to be a party to this proceeding must comply with Arizona Revised Statutes Section 40-360.05 and Rule 14-3-204 of the Arizona Administrative Code. Members of the public may obtain copies of these provisions by contacting the Commission's Consumer Services Section at 1-800-222-7000 or 602-542-4251.

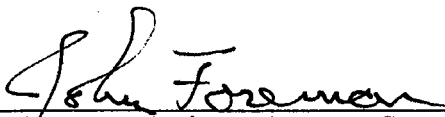
The Project consists of the construction of a natural gas fired, simple-cycle power plant. The Project will include 12 General Electric (GE) LM6000 PC SPRINT NxGen combustion turbine generators. Each generator unit will be capable of operating independent of the other units, allowing the Project to efficiently produce an aggregate generating output ranging from approximately 25 MW up to approximately 575 MW, at prescribed ambient temperature and humidity conditions, as needed to respond to peak load. The Project includes a short 230kV transmission line running within the Project Site to connect the generators to a new switchyard within the same Project Site.

The proposed Project Site is an approximately 100-acre parcel of farmland located in Section 10, Township 6 South, Range 8 East, G&SRB&M, Pinal County, Arizona. The general location of the 100-acre Project Site is east of the Union Pacific Railroad right-of-way that runs parallel with and east of Highway 87, and south of the former Valero refinery facilities that lie south of Randolph Road, all within the southern portion of the corporate limits of the City of Coolidge.

The Application contains detailed information about the Project, and is on file at the Docket Control Center of the Arizona Corporation Commission, 1200 W. Washington, Suite #108, Phoenix, Arizona 85007 and at the Commission's Tucson Office at 400 W. Congress, Suite #218, Tucson, Arizona 85701. The Application is available for review at the Coolidge Public Library, and may also be viewed on the Project website at <http://www.transcanada.com/coolidge>.

These proceedings are governed by Arizona Revised Statutes Sections 40-360 and 40-360.13 and Arizona Administrative Code Rules R14-3-220 and R14-3-113. No substantive communications, not in the public record, may be made to any member of the Committee.

Dated this 14th day of August, 2008.


John Foreman, Assistant Attorney General
Chairman, Arizona Power Plant and
Transmission Line Siting Committee

ATTACHMENT B

1 **BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION**
2 **LINE SITING COMMITTEE**

3 IN THE MATTER OF THE APPLICATION OF
4 COOLIDGE POWER CORPORATION, IN
5 CONFORMANCE WITH THE
6 REQUIREMENTS OF ARIZONA REVISED
7 STATUTES 40-360.03 AND 40-360.06, FOR A
8 CERTIFICATE OF ENVIRONMENTAL
9 COMPATIBILITY AUTHORIZING
10 CONSTRUCTION OF A NOMINAL 575 MW
11 NATURAL GAS-FIRED, SIMPLE CYCLE
12 GENERATING FACILITY LOCATED WITHIN
13 THE CITY OF COOLIDGE IN PINAL
14 COUNTY, ARIZONA

Arizona Corporation Commission

Docket No. L-00000HH-08-0422-00141

Case No. 141

10 **NOTICE AND AGENDA**
11 **OF**
12 **OPEN MEETING**
13 **OF THE**
14 **ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE**
15 **FOR THE PURPOSE OF RATIFYING A PRIOR ACTION**
16 **TAKEN IN VIOLATION OF OPEN MEETING LAW**

17 **NOTICE:** Pursuant to A.R.S. § 38-431.02 and 38-431.05, notice is hereby given to the members
18 of the Arizona Power Plant and Transmission Line Siting Committee (the "Committee") and to
19 the general public that the Committee will hold an open meeting, open to the public on Thursday,
20 October 30, 2008, at 3:00 p.m., at the Coolidge Youth Center, 660 South Main Street, Coolidge,
21 AZ 85228. Additional meetings as permitted by law, if necessary, will be noticed on the Project
22 website at <http://www.transcanada.com/coolidge> and on the Arizona Corporation Commission's
23 ("ACC") website at: www.azcc.gov/AZ_Power_Plant/Line_Siting-Calendar.asp.

24 The purpose of the open meeting is for the Committee to consider ratification of a prior action of
25 the Committee that may have been taken in violation of the Open Meeting Law, A.R.S. §§ 38-
26 431, *et seq.* This action involved the Committee's decision to grant a Certificate of
27 Environmental Compatibility ("Certificate") for the proposed Coolidge Generating Station (the
28 "Project") upon the culmination of the public hearing held on September 30 and October 1, 2008,
pursuant to Notice of Hearing duly published in accordance with A.R.S. § 40-360.04 and Arizona
Administrative Code R14-3-208, in connection with which hearing there may have occurred
violations of applicable Open Meeting Law requirements.

29 The public may obtain a detailed written description of the prior action to be ratified by
30 reviewing or requesting copies of the Certificate of Environmental Compatibility, the transcripts
31 of the hearings and public comment proceedings and all exhibits and filings comprising the entire
32 record in this proceeding, Docket No. L-00000HH-08-0422-00141, Case No. 141, at the Arizona
33 Corporation Commission ("Commission"), Docket Control, 1200 West Washington Street,
34 Phoenix, Arizona, between the hours of 8:00 a.m. and 5:00 p.m. These materials are available
35 now at the Commission's offices above and will be available at least 72 hours in advance of the
36 open meeting on October 30, 2008. (Note, there may be page limitations imposed on the number
37 of pages that may be copied from the transcripts because of contract obligations with the court
38

1 reporting service. However, the complete transcripts of the proceedings may be reviewed by the
2 public at the Commission's offices at the above address.) Some of these materials are also
3 available on line at the Commission's website at <http://www.azcc.gov/>.

4 PUBLIC COMMENT MAY BE TAKEN AT THE BEGINNING OF THE OPEN MEETING.
5 Any interested member of the public may appear and present public comment during the time
6 allotted for public comment. A person may be limited to a single opportunity, and/or to a limited
7 amount of time, to present comments, at the discretion of the Chairman of the Committee.

8 The Project is the subject of the Application of Coolidge Power Corporation for a Certificate of
9 Environmental Compatibility authorizing the Project ("the Application").

10 The Project consists of the construction of a natural gas fired, simple-cycle power plant. The
11 Project will include 12 General Electric (GE) LM6000 PC SPRINT NxGen combustion turbine
12 generators. Each generator unit will be capable of operating independent of the other units,
13 allowing the Project to efficiently produce an aggregate generating output ranging from
14 approximately 25 MW up to approximately 575 MW, at prescribed ambient temperature and
15 humidity conditions, as needed to respond to peak load. The Project includes a short 230kV
16 transmission line running within the Project Site to connect the generators to a new switchyard
17 within the same Project Site.

18 The proposed Project Site is an approximately 100-acre parcel of farmland located in Section 10,
19 Township 6 South, Range 8 East, G&SRB&M, Pinal County, Arizona. The general location of
20 the 100-acre Project Site is east of the Union Pacific Railroad right-of-way that runs parallel with
21 and east of Highway 87, and south of the former Valero refinery facilities that lie south of
22 Randolph Road, all within the southern portion of the corporate limits of the City of Coolidge.

23 The Application contains detailed information about the Project, and is on file at the Docket
24 Control Center of the Arizona Corporation Commission, 1200 W. Washington, Suite #108,
25 Phoenix, Arizona 85007 and at the Commission's Tucson Office at 400 W. Congress, Suite #218,
26 Tucson, Arizona 85701. The Application is available for review at the Coolidge Public Library,
27 and may also be viewed on the Project website at <http://www.transcanada.com/coolidge>.

28 These proceedings are governed by Arizona Revised Statutes Sections 38-431 *et seq.*, 40-360 *et*
seq., and Arizona Administrative Code Rules, R14-3-201 *et seq.*, R14-3-220 and R14-3-113. No
substantive communications, not in the public record, may be made to any member of the
Committee.

AGENDA: The agenda for this open meeting is as follows:

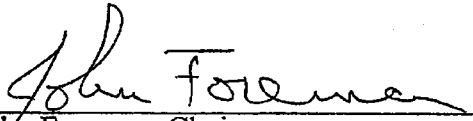
1. Call to Order, and Roll Call
2. Chairman's explanation of the need for and purpose of the meeting.
3. Discussion and potential vote regarding consideration of the oral recordings, transcript, exhibits, the Certificate of Environmental Compatibility and all other docketed filings comprising the entire record in Case No. 141, all of which have been publicly available at the Commission since October 6, 2008, as the basis for the Committee's potential ratification of its October 1, 2008 vote to approve a Certificate of Environmental Compatibility for the Project.

- 1 4. Discussion and potential vote regarding exclusion of the September 29, 2008 site tour by
2 certain Committee members and all references of record to such tour and/or
3 communications by or to Committee members in connection therewith.
4
5 5. Discussion and potential vote on potential ratification of the Committee's prior action
6 taken in Case No. 141 on October 1, 2008, to approve a Certificate of Environmental
7 Compatibility for the Project.
8
9 6. Next Committee meeting date, time, and location if necessary, as permitted by law.

7 The Committee may omit some of the matters on the agenda and may change the order of
8 consideration of the items as time and circumstances require.

8 Persons with a disability may request a reasonable accommodation, such as a sign language
9 interpreter, by contacting Linda Hogan, voice phone number 602-542-3931, email:
10 l.hogan@azcc.gov . Requests should be made as early as possible to arrange the accommodation.

11 Dated this 17th day of October, 2008.

12
13 
14 John Foreman, Chairman
15 Arizona Power Plant and Transmission
16 Line Siting Committee
17 Assistant Attorney General
18 john.foreman@azag.gov
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